

**IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF MISSOURI
CENTRAL DIVISION**

AARON ADAIL, Register No. 517081,)	
)	
Plaintiff,)	
)	
v.)	No. 06-4287-CV-C-SOW
)	
LARRY CRAWFORD, et al.,)	
)	
Defendants.)	

REPORT, RECOMMENDATION AND ORDER

On September 9, 2008, defendants filed a motion to dismiss for plaintiff's failure to prosecute, pursuant to Rule 37(d), Federal Rules of Civil Procedure.¹ Defendants state plaintiff failed to appear for his properly noticed deposition on September 3, 2008, and failed to appear for a prior deposition on October 26, 2007. Defendants assert the notice of deposition mailed to plaintiff was not returned, and plaintiff did not telephone defense counsel, or the place where the deposition was scheduled, to indicate he could not attend or would be late.

Plaintiff did not respond to defendants' motion to dismiss and has not filed any documents with the court since providing his change of address on November 16, 2007.² Mail sent from the court to plaintiff at his last known address has not been returned, and so it appears he has received it.

In the absence of some indication from plaintiff that he continues to want to proceed with this case, it should be dismissed. Dismissal is authorized under Rules 37(d) and 41(b), Federal Rules of Civil Procedure. The latter rule authorizes defendants to seek dismissal for plaintiff's

¹This case was referred to the undersigned United States Magistrate Judge for processing in accord with the Magistrate Act, 28 U.S.C. § 636, and L.R. 72.1.

²Plaintiff did not file objections to a report and recommendation entered on October 10, 2007, although it was resent to him in December 2007 and he was granted an extension of time to do so.

failure to prosecute and indicates that unless otherwise ordered, a dismissal under that rule constitutes an adjudication on the merits.

Defendants have also sought an extension of the discovery and dispositive motion deadlines in the event the case is not dismissed for failure to prosecute.

For these reasons, it is

ORDERED that defendants' motion of October 6, 2008, for an extension of the discovery and dispositive motion deadlines to a time after the court rules on the motion to dismiss is granted, and (1) if this case is not dismissed, discovery closes sixty days after the court's order denying the motion to dismiss, and (2) dispositive motions are due thirty days after the close of discovery. [56] It is further

RECOMMENDED that defendants' motion of September 9, 2008, to dismiss for plaintiff's failure to prosecute, pursuant to Rules 37(d) and 41(b), Federal Rules of Civil Procedure, be granted. [55]

Under 28 U.S.C. § 636(b)(1), the parties may make specific written exceptions to this recommendation within twenty days. The District Judge will consider only exceptions to the specific proposed findings and recommendations of this report. Exceptions should not include matters outside of the report and recommendation. Other matters should be addressed in a separate pleading for consideration by the Magistrate Judge.

The statute provides for exceptions to be filed within ten days of the service of the report and recommendation. The court has extended that time to twenty days, and thus, additional time to file exceptions will not be granted unless there are exceptional circumstances. Failure to make specific written exceptions to this report and recommendation will result in a waiver of the right to appeal. See L.R. 74.1(a)(2).

Dated this 15th day of October, 2008, at Jefferson City, Missouri.

/s/ William A. Knox

WILLIAM A. KNOX
United States Magistrate Judge